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UNCLAS SECTION 01 OF 02 KHARTOUM 001538

DEPT FOR AF A/S FRAZER, SE WILLIAMSON, AF/SPG, DRL  
NSC FOR PITTMAN AND HUDSON  
ADDIS ABABA FOR USAU  
DEPT PLS PASS USAID FOR AFR/SUDAN

SENSITIVE  
SIPDIS

E.O. 12958: N/A  
TAGS: [ASEC](#) [PGOV](#) [PREL](#) [KPKO](#) [SOCI](#) [AU](#) [UNSC](#) [SU](#)  
SUBJECT: REPORTS OF ARREST OF WAR CRIMES SUSPECT GREATLY  
EXAGGERATED

¶1. (SBU) Summary: Despite ongoing high profile pronouncements regarding the alleged arrest of notorious janjaweed militia leader Ali Kushayb, little actual proof has emerged that Kushayb is in GOS custody. Meeting with polchief, (SPLM) State Minister of Justice Wek Kuol said he had heard Kushayb was in custody, but knew of no details of the arrest. Poloffs in El Fasher and Khartoum queried sources throughout Darfur regarding the fate of the militia leader, but none was able to confirm Kushayb's arrest and detention. Darfuris in the know claimed the announcement was a ploy to delay the ICC, and that Kushayb remains at large. End Summary.

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GNU MINISTER ON ARREST: "THIS IS WHAT I HAVE HEARD"  
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¶2. (SBU) On October 16, poloffs met with the Government of National Unity's State Minister of Justice Wek Mamer Koul to discuss the arrest of Ali Kushayb. Wek, an appointee of the SPLM to the GNU, said without much confidence that he had heard Kushayb had been arrested, but didn't have any details, offering "This is what I know so far, that he is in Geneina." Wek could not confirm where Kushayb was being held, the date of Kushayb's trial, or whether the GOS's own Chief Prosecutor for war crimes in Darfur had completed his report on Kushayb's crimes. (Note: Often the NCP does not share information with the SPLM, even at the Ministerial level, so this may not be an indication that Kushayb's detention is a fabrication. However, it is still remarkable that the number two at the Ministry of Justice had not heard any details. End note.)

¶4. (SBU) When asked under which law Kushayb would be tried, Wek did not acknowledge concerns that Sudanese law currently has no statute equivalent to the ICC's charge of commission of war crimes and crimes against humanity. "The problem is not the law, it is the interpretation of the law," Wek said, adding, "the prosecutor must meet the standard for the criminal court" when trying Kushayb. According to Wek, Sudanese law dictates that the location of the crime determines the location of the trial, and while the trial would most likely be held in El Geneina, the MOJ reserves the right to change the venue. Wek was tight-lipped when asked if the prosecutor was investigating other Darfuris or GOS officials for similar crimes.

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LAWYERS ASK "HABEAS CORPUS?"  
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¶4. (SBU) In conversations with poloff on October 15, lawyers from the independent Darfur Bar Association (DBA) scoffed at the assertion that Kushayb was in custody, and disputed the announcement that the Sudanese MOJ was prepared to try Kushayb within the next week. Speaking by telephone from El Geneina, West Darfur, Imam Abu Talib laughed out loud at the suggestion that authorities were

holding Kushayb there. "He is not here. This morning I asked at the court and at the police. They have no news about him," Abu Talib said. The DBA's chief legal advocate in West Darfur, Abu Talib assured poloff that had authorities arrested the militia leader, the fact would be well-known in West Darfur. Abdelrahman Gasim, DBA secretary, said the association would send legal observers if there is a trial, but remained skeptical that the GOS could find a law in its legal code under which to try Kushayb.

15. (SBU) Regarding the possibility for Kushayb to receive a fair and thorough trial, West Darfur civil society advocate Tadj Alsir said that even if Kushayb were tried, witnesses would not come forward to testify against him. "Police are still retaliating against witnesses for reporting janjaweed attacks. It's a joke - there is no chance for a fair trial," he said. Having worked in El Geneina from 2004 to 2008 for the Sudanese NGO Community Development Association, Alsir observed that West Darfur is in total chaos. He said that with the janjaweed exerting Mafia-like control over the city proper, it is inconceivable that the GOS has enough authority to try the militia leader in an area which served as his home-base from 2003 to 2004.

16. (SBU) Comment: While the GOS's August appointment of the chief prosecutor for war crimes in Darfur was a small step forward, this week's announcement of the "arrest" of a militia leader on the ICC's hit-list has proven impossible to confirm concretely, even for the government's own minister. This suggests that the GOS is not as serious (or coordinated) on the war crimes issue as they would like to appear. At best, they are wildly exaggerating the results of a timid and tentative process, if one actually exists. Sudanese trials that meet international standards are hard to find, and for the Sudanese to hold a trial of Kushayb rigorous enough to meet the

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ICC's requirements for complementarity is likely impossible. Although some have suggested that the regime may be willing to pay off Kushayb and his family in exchange for Kushayb being the "fall guy" for the regime's crimes in Darfur, we would be surprised if Kushayb actually shows up at court in El Geneina anytime soon, much less subjected to the full weight of an adversarial legal proceeding.

FERNANDEZ